WA 36/2006
BEFORE HON'BLE
THE HON'BLE MR.JUSTICE AMITAVA ROY
THE HON'BLE MR.JUSTICE A.POTSANGBAM
The appellant-wife being aggrieved by the determination made against her in Title Suit (M)14/2003 registered on an application under section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) of the respondent- husband granting decree for dissolution of marriage, is before this Court seeking redress.

[2] We have heard Mr. J.P.Sharma, learned counsel appearing for the appellant. Though the names of the learned counsel for the respondent appear in the Cause List, none is in attendance. Having regard to the year of registration of the appeal, we are not inclined to adjourn the hearing thereof.

[3] The pleaded assertions of the parties have to be briefly dealt with for better appreciation of the submissions advanced on behalf of the appellant-wife. The parties are Hindus and were married in accordance with their religious rites on 11.12.2000 whereafter, they set up their marital home. In his application, the respondent husband alleged total non-cooperation and indifferent attitude of the appellant- wife to perform her matrimonial obligations. According to him, not only she refused cohabitation on various pretexts, she disclosed as well the lingering attachment with some other man in her mind. The Respondent-husband also alleged infertility of the wife at the time of marriage. He further alleged that at the appellant used to frequently visit her father's house on slightest excuses and, eventually, deserted the matrimonial home on 7.6.2002. He, therefore, asserted unbearable cruelty towards him by her and thus sought a decree for divorce.

The appellant-wife denied the imputation of non-cooperation and indifference as well her infertility and imputed the respondent-husband's lack of inclination to cohabit with her more particularly, in view of his illicit relationship with his sister- in -law, who used to reside in the same premises. She also alleged physical and mental torture so much so that she was ousted from the marital home on 7.6.2002. She asserted that the false plea of lack of cooperation in the matter of cohabitation was only to cover the respondent's immoral relationship with his sister- in- law.

[4] On the basis of the pleadings, issues were framed. The parties examined themselves and 3 witnesses each in support of their respective cases. The learned Trial Court on a consideration of the pleadings and the evidence decreed the suit for divorce by the impugned Judgment and order-dated 15.9.2006.

[5] Mr.Sharma, learned counsel for the appellant has strenuously urged that the impugned judgment and order suffers from jurisdictional error inasmuch as considering the allegation of non-consummation of marriage made by the respondent, an application under section 12 of the Act ought to have been filed. As the learned Court below had no jurisdiction at all to entertain an application under section 13 of the Act, the impugned judgment and decree is liable to be annulled on that ground alone. He has questioned the maintainability of the proceeding also on the ground that the same has been lodged within two years of the physical separation of the parties w.e.f. 7.6.2002 and thus hit by section 13(1)(i b) of the Act. While contending that the appellant wife had not deserted her matrimonial home but was forced to leave the same and that respondent husband entertained animus deserendi from 13.12.2002, the learned counsel for the appellant has argued that he having failed to adduce medical evidence to establish the infertility of the wife, the learned Court below ought to have rejected the petition. Mr. Sharma, has further pleaded that in absence of any evidence on record that marriage has not been consummated, the learned Trial Court fell in error in accepting the said plea of the respondent husband and decreeing the suit.

[6] Before recording our findings, it would be apt to summarily traverse the evidence on record.

[7] The respondent husband in his evidence has broadly substantiated the facts pleaded in his petition and, therefore, no reiteration thereof in details is essential. He admitted his marriage with the appellant and also highlighted her continuous aversion to cohabitation on the ground of tiredness or otherwise. He stated that such conduct and inability of the wife resulted in unbearable mental cruelty to him. He also testified about appellant- wife's frequent visit to her parental house without any cause. He proved Exhibit-1, exhibited by appellant-wife's father to the effect that he has withdrawn his daughter because of incompatibility of conduct of the parties. The respondent husband also stoutly denied the allegation of his illicit relationship with his sister- in- law who is 10/12 years elder to him resulting in agonizing and shameful state of mind.

PW 3, Smti Protiva Ray, sister- in- law of the respondent husband on oath stridently denied the allegation of immoral and objectionable relationship of her with the respondent. She deposed that on being enquired by her, the appellant wife had disclosed to her that she had been forcibly married with the respondent and, therefore, it would not be possible for her to cohabit with him. PW 4, a neighbour of the parties shared the information, which he received from the respondent husband that the appellant wife had disclosed about her fondness for another man.

[8] In contradistinction, the appellant wife in her evidence reiterated her assertions in her written statement. She also proved the application Exhibit Ka on 11.12.2000 submitted by her before the President of Vetagaon Mahila Samity about continuous confrontation between the parties leading to their miserable state of existence. In cross examination, the appellant wife conceded that it would not be possible to live any more with the respondent husband in view of his illicit relationship with his sister-in-law. DW 2, father of the appellant wife admitted exhibit-I and stated that he had withdrawn his daughter from the company of the respondent husband. DW 3, President of the Vetagaon Mahila Samity stated about the complaint-dated 11.12.2002 regarding physical and mental torture meted out by the husband and that in this connection a meeting was held. DW 4, a member of the aforesaid Vetagaon Mahila Samity also deposed in the same lines. She by referring to the Exhibit 'Ka' stated that it did not disclose any allegation of illicit relationship between the respondent husband and his sister-in-law. The learned Trial Court, on the basis of the said evidence, concluded as herein below:

(a) There was no cohabitation between the parties.

(b) The appellant- wife had been given in marriage to the respondent husband against her will.

(c) Non-consummation of marriage and indifference of the wife for cohabitation resulted in mental cruelty to the husband.

(d) The father of the appellant wife withdrew her from the company of the respondent husband because of incompatibility of the conduct of the parties.

(e) Exhibit 'Ka' did not disclose any complaint of illicit relationship between the respondent husband and his sister-in-law and thus the evidence of the appellant wife, DW 3 and DW-4 on this charge was not acceptable.

(f) Imputation of illicit relationship between the respondent husband with his sister- in- law is also not acceptable amongst other due to the fact they live in the same premises along with grown up daughters of the latter.

The suit was thus decreed on the ground of cruelty.

[9] The decision of the Apex Court in R.Lakshmi Narayan Vs. Santhi reported in (2001) 4 SCC 688 relied upon by Mr.Sharma, learned counsel for the appellant is of no application in the facts of the instant case. In the above case, the respondent had filed application under section 12(1)(b) read with Section 5(ii)(b) of the Act for a declaration that the marriage with the appellant was a nullity. The instant proceeding having been instituted under section 13 of the Act for dissolution of marriage on the ground of cruelty, this decision is of no avail to the appellant.

Section 12 and 13 of the Act operate in different fields contemplating separate reliefs as envisaged therein. The other decision of the Apex Court relied by the learned counsel for the appellant in Shyam Sunder Kohli Vs.Susma Kohli @ Satya Devi reported in (2004) SCC 747 relates to the petition for dissolution of marriage under section 13(1)(I-b) of the Act on the ground of desertion. This decision as well, in the facts of the instant case, does not advance the case of the appellant wife.

[10] Though in a given fact situation, any one and more of the grounds enumerated in Section 13 of the Act may have a nexus with those as envisaged in Section 12, the same per se would not render a petition seeking divorce unsustainable only because some other reliefs could be sought for by one of the litigating parties.

[11] The respondent has sought a decree for dissolution of marriage on the ground of cruelty and not desertion as may be noticed from his pleadings. The plea of bar of two years as envisaged in Section 13(1)(i)(b) of the Act is also not drawn in the facts of the instant case. The plea against maintainability of the proceeding, therefore, is negatived.

[12] The evidence on record does not disclose any material in support of the plea of infertility of the appellant wife. Testimony of both sides on the aspect of cohabitation is also evenly balanced. The fact that the appellant wife had left her marital home on 7.6.2002 with her father giving an undertaking demonstrating incompatibility on the conduct of the parties, however, cannot be lightly brushed aside. The parties have lived separately thereafter. Unproved charges of infidelity of the respondent husband and brazen illicit relationship with his sister- in- law in, our opinion is sufficient to subject him to unbearable mental agony resulting in cruelty, as contemplated under section 13 of the Act. The appellant wife in her cross-examination has also candidly expressed her unwillingness to live with the respondent.

[13] On a totality of the considerations hereinabove, we are persuaded to hold that neither the appreciation of the evidence nor the findings recorded on the basis thereof by the learned Trial Court can be repudiated as absurd and illogical. The view taken by the learned Trial court is plausible one and in absence of any irrationality and outright illegality, we are disinclined to interfere. Consequently, the appeal is dismissed. No costs.